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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

S.C., Petitioner, v. THE SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent; CONTRA COSTA COUNTY CHILDREN AND FAMILY SERVICES BUREAU, Real Party in Interest.	A156547 (Contra Costa County Super. Ct. Nos. J18-00751 & J18-00752)

Petitioner S.C. (Mother) seeks writ review (Cal. Rules of Court, rule 8.452) of a juvenile court order terminating parental rights and setting a hearing under Welfare and Institutions Code section 366.26.[1] Mother challenges the juvenile court's orders bypassing reunification services under section 361.5, subdivisions (b)(10) and (b)(11). We agree that section 361.5, subdivision (b)(10) does not apply, but we reject Mother's challenge under subdivision (b)(11).

FACTUAL AND PROCEDURAL BACKGROUND

In August 2018, the Contra Costa County Children and Family Services Bureau (the Bureau) filed section 300 petitions for A.P. (three years old) and L.P. (a newborn)

[1] All undesignated section references are to the Welfare and Institutions Code.

(collectively, Minors), after Mother tested positive for amphetamine on the day L.P. was born.[2] L.P. tested positive for amphetamine the following day. The detention/jurisdiction report stated Mother was currently on psychotropic medications and admitted a history of methamphetamine dependence. Mother had seven children; as to four, there were previous dependency cases with no reunification. The dependency history showed positive methamphetamine tests for Mother and/or her newborn children in 2004, 2007, and 2009.

In October 2018, following a contested jurisdiction hearing, the juvenile court sustained the allegations, as to both Minors, that Mother "has an extensive history of substance abuse that includes, but is not limited to, methamphetamines and marijuana, which severely impacts her ability to safely care for the child"; and that Mother previously lost her parental rights to two of Minors' half-siblings, in 2008 and 2009, "for issues related to the mother's extensive substance abuse." In addition, as to L.P. only, the juvenile court sustained the allegation that Mother tested positive for amphetamine on the day of L.P.'s birth.[3]

In the November 2018 disposition report, the Bureau recommended bypassing reunification services. Mother had entered residential drug treatment in November 2018, a step the Bureau "applaud[ed]." Nonetheless, the Bureau opined this step alone failed to demonstrate reasonable efforts to treat Mother's substance abuse problem, which led to the termination of her parental rights over two of Minors' half siblings.

In January 2019, on the first day of the contested disposition hearing, the Bureau social worker testified that Mother was still in the residential treatment program. She had attended four visits and missed four visits; one of the missed visits was due to a "blackout period" when she entered residential treatment. Mother acted appropriately during the

[2] A third petition was filed for another of Mother's children. We omit facts relating to this child, as well as those relating to Minors' presumed father.

[3] Additional allegations in both petitions were dismissed.

visits and Minors responded well to her. The social worker testified Mother had seven children, including Minors, and none were in her custody.

On February 8, 2019, the second day of the contested disposition hearing, Mother testified. She entered "detox" on November 17 and entered the residential program on November 24. However, she left the program on February 5, prior to her scheduled graduation date of February 23, because she "didn't like the way the staff was handling the situation" and "it just was not working for me."[4] She testified that she would enter another residential program if ordered by the court, she had been attending NA meetings, and her sister was her support system.

The juvenile court noted Mother had "seemed to be doing relatively well" in the program but her decision to leave was "troubling": "I think it's that lack of follow through that ultimately makes it difficult to really ascertain how truly committed she is to her sobriety. She knew how crucial this was, and I have no idea why she would have left without at least trying to get into some type of program immediately. [¶] . . . [¶] I do think the mother has made some efforts. I don't think that they are sufficient for me to find that she has made any sustainable changes from the type of substance abuse that she has been struggling with for a long time that has resulted in the termination of services and parental rights for her other children, nor can I find at this time, because there's a second analysis, part of the analysis, that it would be in the kids' best interest to have services provided to her at this time. And I honestly would have liked to have made those findings, but I think the evidence before me at this time makes it very difficult to make those finding[s]." The juvenile court bypassed reunification services pursuant to section 361.5, subdivisions (b)(10) and (b)(11), and set a section 366.26 hearing.

DISCUSSION

[4] The "situation" Mother referred to was an instance when, after one resident was under the influence of drugs, all program residents were drug tested and several tested presumptively positive for methamphetamine, including some for whom methamphetamine was not their drug of choice. Mother was one of the residents whose test was presumptively positive and she was sent to "detox"; however, later laboratory testing showed a negative result.

Mother challenges the juvenile court's order denying reunification services. We review the order for substantial evidence. (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914.)

I. *Section 361.5, subdivision (b)(10)*

Section 361.5, subdivision (b)(10), authorizes the juvenile court to deny reunification services if the court previously "ordered termination of reunification services for any siblings or half siblings of the child . . . ." Mother contends, and the Bureau agrees, there is insufficient evidence that reunification services for Mother were terminated as to a sibling or half sibling of Minors. Accordingly, we grant the petition to the extent it challenges the juvenile court's finding that section 361.5, subdivision (b)(10), applies, and we will order that finding stricken.

II. *Section 361.5, subdivision (b)(11)*

Section 361.5, subdivision (b)(11), provides that "[r]eunification services need not be provided to a parent . . . when the court finds, by clear and convincing evidence," that "the parental rights of [the] parent over any sibling or half sibling of the child had been permanently severed, . . . and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent." Mother concedes that her parental rights over two of Minors' half siblings were terminated, but disputes the juvenile court's finding that she failed to make reasonable efforts.

"The reasonable effort requirement focuses on the extent of a parent's efforts, not whether he or she has attained 'a certain level of progress' [Citation.] 'To be reasonable, the parent's efforts must be more than "lackadaisical or half-hearted." ' [Citations.] However, '[t]he "reasonable effort to treat" standard "is not synonymous with 'cure.' " ' [Citation.] [¶] We do not read the 'reasonable effort' language in the bypass provisions to mean that *any* effort by a parent, even if clearly genuine, to address the problems leading to removal will constitute a reasonable effort and as such render these provisions inapplicable. It is certainly appropriate for the juvenile court to consider the *duration, extent and context* of the parent's efforts, as well as any other factors relating to the

quality and quantity of those efforts, when evaluating the effort for reasonableness. And while the degree of progress is not the *focus* of the inquiry, a parent's progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the *reasonableness* of the effort made. [¶] Simply stated, although success alone is not the sole measure of reasonableness, the *measure* of success achieved is properly considered a factor in the juvenile court's determination of whether an effort qualifies as reasonable." (*R.T. v. Superior Court, supra,* 202 Cal.App.4th at pp. 914–915.)

Mother's parental rights over Minors' half siblings were terminated in 2008 and 2009. Although Mother entered a residential drug treatment program after Minors were detained, she left the program before graduating. Substantial evidence supports the juvenile court's finding that Mother failed to make reasonable efforts.

DISPOSITION

The petition is granted in part and the juvenile court is ordered to strike the finding that section 361.5, subdivision (b)(10) applies. The petition is otherwise denied. The request for a stay of the June 7, 2019 section 366.26 hearing is denied. This decision is final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

SIMONS, J.

We concur.

JONES, P.J.

BURNS, J.

(A156547)